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OGC Has Reviewed
SEP 18 1954

MEMORANDUM FOR: Colonel White

SUBJECT : Status of Question: "Payment of Per Diem
to Persons Returning for Leave and PCS"

1. While you were gone, several things transpired with reference to the subject problem, which was on my suspense list as a result of notes made by [REDACTED] after the 15 July 1954 COA/DD/P staff meeting. You may recall that there has been a question for some time regarding the legality of per diem payments to PCS returnees, and a further question about how much abuse there was of this questionable procedure.

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2. I took the matter up with Larry Houston, who turned me over to [REDACTED] in OGC, with a request that [REDACTED] explore the legal niceties involved, and send me a report which would be in the nature of an opinion on the legalities at issue. In the meantime, I held a meeting with [REDACTED] and representatives from EE and FE, the principal "offenders." It developed that FE and EE gave assurances that such per diem as they were presently authorizing consisted of from 5 to 7 days "for consultation" in Washington. In effect, they were saying that the alleged former abuses (some running into payment of per diem for months) had now been reduced to workable limits.

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3. [REDACTED] wrote an opinion (see reference) which seemed to close the legal door on even this last vestige of the practice, saying that it just was not legal to make these payments. I then forwarded this opinion to [REDACTED] with a suggestion that he let me know what action would be taken to bring DD/P practice in line with this opinion, or if he thought further conversations between Messrs. Houston and [REDACTED] were indicated.

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4. The next thing I heard was late last week when [REDACTED] called to advise me that he had been wrong in his opinion, and that as a result of advice he had received from representatives of EE and FE, he was obliged to rewrite his opinion, and at the same time "eat crow." It seems that several people in the affected divisions cited precedent arising out of a Comptroller General's opinion in connection with similar payments in the State Department to Foreign Service Officers, under date of 1952. Accordingly, I advised [REDACTED] to withhold action pending receipt of this opinion (see reference) which has now come in. The essence of it seems to be that it is a legal practice, under certain conditions and subject to careful limitation, with payment not to exceed two weeks. Mr. Houston is aware of the change in the legal opinion,

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but my personal feeling is that the reversal was unfortunate from the OGC point of view, since it occurred as the result of concerted protest on the part of DD/P, who apparently made their point with room to spare. Future dealings of OGC with DD/P may be somewhat compromised as a result, at least for a time.

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5. With your approval, I shall send this new opinion to [REDACTED] unless you feel it would be more appropriate to have a memo of transmittal prepared for your signature, passing the paper to [REDACTED]. However, the net result is that legal precedent has been established for such payments, and the COA/DD/P is aware of the necessity for maintaining careful watch to see that the privilege is not abused. Actually, the 5 or 7 days in question does serve a useful purpose, though in most cases the time appears to be spent to the advantage of the employee (in his placement) rather than to the Agency (from the standpoint of what technical information they might get from the employee).

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